

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

NICOLE DANIELLE BOOZER, R.N.
Respondent

Case No.: C-02-80098

ORDER AFFIRMING SUMMARY SUSPENSION

I. Introduction

This case arises under the District of Columbia Health Occupations Revision Act of 1985, as amended (D.C. Official Code § 3-1205.15), and Title 17 Chapter 41 of the District of Columbia Municipal Regulations (“DCMR”). On February 1, 2002, this administrative court received a copy of Respondent Nicole Danielle Boozer’s request for a hearing on a Notice of Summary Action to Suspend License (“Notice”) issued by the Acting Administrator for Health Care Licensing, District of Columbia Department of Health, on January 7, 2002. As set forth in the Notice, the basis of the January 7th summary suspension was Respondent’s alleged administration or dispensation of drugs without authorization on June 29, 2001 in violation of D.C. Official Code § 3-1205.14(a)(19) which, in the Department of Health’s view, created an imminent danger to the health and safety of the residents of the District of Columbia.

Pursuant to D.C. Official Code § 3-1205.15, a licensee has the right to request a hearing within 72 hours after service of the notice of the summary suspension, and a hearing shall be held within 72 hours of receipt of a timely request.¹ Accordingly, this administrative court convened a hearing in this matter on February 4, 2002. Pamela Smith, Esquire, appeared on behalf of the Government. Respondent, who appeared *pro se*, requested a brief continuance of the hearing in order to obtain counsel which, upon the Government's consent, I granted.

Subsequently, this administrative court received an unopposed motion for an additional continuance along with an entry of appearance by Respondent's counsel, Douglas B. Evans, Sr., Esquire. In support of the motion, Respondent's counsel represented that there is a pending criminal proceeding involving Respondent before the United States District Court for the District of Columbia that relates to this proceeding.²

By order dated February 11, 2002, I granted Respondent's motion and set a new hearing date. In addition, the February 11th order required the parties to file by April 23, 2002 a Joint Proposed Prehearing Order which would identify Respondent's affirmative defenses, list all witnesses and summaries of their expected testimonies, as well as disclose all exhibits and objections thereto. The Government timely filed its proposed order, representing that it had been unable to reach Respondent's counsel. Respondent's counsel neither submitted a response to the February 11th order, nor did he request a continuance to do so.

¹ In light of possible service irregularities, the Government represented that it would waive any objection as to the timeliness of Respondent's request for a hearing and proceed on the merits.

² A status conference in the criminal proceeding was scheduled for April 12, 2002 at which time Respondent's counsel contemplated the matter being resolved. To date, this administrative court has received no additional information from Respondent regarding the criminal proceeding.

The hearing re-convened on May 30, 2002. Pamela Smith, Esquire, appeared on behalf of the Government. Karen Hicks, Associate Administrator for Patient Care Services and Chief Nurse Executive for Universal Health Services/The George Washington University Hospital, and Kevin Castle, Administrator and Chief Nurse Executive for ConTemporary Nursing Solutions, Inc., testified as witnesses for the Government. Despite having been provided notice of the date and time of the hearing, neither Respondent nor her counsel appeared.³ See *DOH v. Boozer*, OAH No. C-02-80098, at 1-2 (Order, May 9, 2002) (attached hereto). The hearing was held in Respondent's absence. See 17 DCMR §§ 4103.2 and 4118.6. Pursuant to the requirements of D.C. Official Code § 3-1205.15(c), this decision is being issued within 72 hours after the hearing.

Based upon the testimony of the witnesses and my evaluation of their credibility, the admitted documentary evidence, and the entire record of these proceedings, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

From the period May 7, 2001 through June 29, 2001, Ms. Boozer was an employee of ConTemporary Nursing Solutions, Inc. ("ConTemporary") and was contracted as an Emergency Room Travel Nurse by The George Washington University Hospital ("GWUH").

³ At approximately 11:35 a.m., the OAH Clerk's office attempted to reach Respondent's counsel by telephone to determine his whereabouts. An associate of Mr. Evans' stated that, although he was not certain, he believed Mr. Evans was at the Superior Court of the District of Columbia attending to other matters.

GWUH utilizes the widely known computerized Pyxis Med-Station system (“Pyxis”) for the dispensation and logging of drugs and other supplies utilized in patient care. *See F.T.C. v. Cardinal Health, Inc.*, 12 F. Supp.2d 34, 39 (D.D.C. 1998) (noting Pyxis Corp. is “the pioneer manufacturer of automated vending machines which dispense pharmaceuticals and hospital supplies to the staff of medical institutions. [In 1998, Pyxis Corp. had] 51,000 systems installed in 1,600 hospitals throughout the United States and Canada”).

Under GWUH’s Pyxis system, drugs could only be obtained by authorized medical practitioners by entering the name of the patient, the name and personal identification number of the requesting medical practitioner, and the drug requested. The GWUH’s Pyxis system also required the medical practitioner’s verification of the actual amount of a particular drug that was dispensed so that the system’s inventory could be properly monitored. GWUH runs an inventory check of its Pyxis System at the end of each nursing shift, called a “Discrepancy Report.” GWUH’s Pharmacy monitors the Pyxis system daily.

On June 29, 2001, Ms. Hicks directed that a report be generated to show the drugs withdrawn by Ms. Boozer during her shift that morning. Ms. Hicks took this action based on a comment from a supervisor of Ms. Boozer’s that Ms. Boozer had been missing for part of her shift that day and that, upon her return, Ms. Boozer’s speech had appeared slurred.

The narcotics portion of the June 29, 2001 report requested by Ms. Hicks revealed that Ms. Boozer withdrew 4 mg. of Morphine Sulfate, a Class II Narcotic, at 12:24:57 A.M.; 50 mg./ml. of Meperidine Hydrochloride (the generic name for Demerol), a Class II Narcotic, at 6:33:42 A.M.; and another 100 mg./ml. of Meperidine Hydrochloride some twelve seconds later at 6:33:54 A.M. Petitioner’s Exhibit (“PX”) 100. *See generally* Physician’s Desk Reference at

2852, 3465 (55th ed. 2001). Upon further investigation, Ms. Hicks determined that the patient for whom Ms. Boozer allegedly withdrew the Demerol had not been prescribed that medication. In addition, Ms. Hicks determined that the Demerol had not been documented as having been administered to the patient.⁴

On July 9, 2001, as part of an “Interim Impaired Nurse Return to Work Contract” (“Contract”) between Ms. Boozer and ConTemporary, Ms. Boozer admitted removing the Demerol from the GWUH Pyxis system on June 29, 2001 and consuming it.⁵ PX 101. Based on the observation of Ms. Boozer’s supervisor as relayed to Ms. Hicks, I find that Ms. Boozer consumed the Demerol sometime during her shift on June 29, 2001. As part of the Contract, Ms. Boozer also agreed to enter and complete a drug rehabilitation program at Providence Hospital in Washington, DC. *Id.* After being discharged as an in-patient, Ms. Boozer began outpatient treatment. Ms. Boozer terminated her employment with ConTemporary on or about August 15, 2001 without completing her rehabilitation program, however.

III. Conclusions of Law

Pursuant to 17 DCMR 4118.7, in order to affirm a summary suspension of a health professional’s license,⁶ the Government must prove by substantial evidence that the action was necessary “to prevent imminent danger to the health or safety of the citizens of the District.”

⁴ The Government has not challenged the propriety of Ms. Boozer’s withdrawal of the 4 mg. of Morphine Sulfate on June 29, 2001. Accordingly, I make no findings as to that matter here.

⁵ Mr. Castle explained that, under the Contract, an impaired practitioner is provided an opportunity to continue working while obtaining rehabilitative treatment, but under severely restricted conditions, *e.g.*, no access to medications, non-emergency practice environments and daytime shifts.

⁶ As a registered nurse licensed in the District of Columbia (License No. RN66495), Ms. Boozer is properly deemed a “health professional” for purposes of these proceedings. *See* D.C. Official Code §§ 3-1201.01(8), 3-1201.02(17), 3-1202.04; 17 DCMR 4118.1.

Given the life or death decisions that must be quickly and competently rendered in a hospital's emergency room, I conclude that a chemically impaired emergency room medical practitioner necessarily creates an imminent danger to the health and safety of the citizens of the District. *See Arthur v. DC Nurses' Examining Bd.*, 459 A.2d 141, 147 (D.C. 1983) (affirming Board's two-year suspension of registered nurse's license based on nurse's use of 50 mg. of Demerol on the pretext that the drug was to be administered to a patient, and noting that revocation of the license would also have been an appropriate exercise of the Board's discretion).

In this case, the Government has presented uncontroverted evidence that, on June 29, 2001, Ms. Boozer used her position as a registered nurse at GWUH to misappropriate a total of 150 mg. of Demerol and consume the same. *See* D.C. Code § 3-1205.14(19). Moreover, based on the observation of Ms. Boozer's supervisor, Ms. Boozer consumed this Class II Narcotic sometime during her shift in GWUH's emergency room. Accordingly, I conclude that the Government has met its burden of proof, and the January 7, 2002 summary suspension of her District of Columbia license to practice nursing shall be affirmed.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this proceeding, it is hereby, this ____ day of _____, 2002:

ORDERED, that the January 7, 2002 summary suspension of Respondent's license to practice nursing in the District of Columbia (License No. RN66495) is hereby **AFFIRMED**; and it is further

ORDERED that, pursuant to D.C. Official Code § 2-510 and 17 DCMR 4118.9(d), judicial review of this order may be obtained by filing a petition for review with the District of Columbia Court of Appeals. Pursuant to D.C. App. R. 15(a), any such petition must be filed within thirty-five (35) days of the service date of this order stated below; and it is further

ORDERED, that pursuant to 17 DCMR 4118.11, the January 7, 2002 summary suspension of Respondent's license to practice nursing in the District of Columbia shall remain in effect until superseded by order of the Board of Nursing in accordance with 17 DCMR 4118 or, if appealed by Respondent, reversed by the District of Columbia Court of Appeals.

FILED 06/03/02

Mark D. Poindexter
Administrative Judge